IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.168 of 2000
With
CMP No.669 of 2000.

Reserved on: July 05, 2007

Decided on: *July 23, 2007.*

Ram Lok & Ors. ***…..Appellants.***

VERSUS

Bogalia ***…..Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellants: **Mr.K. D. Sood & Mr.B. K. Sood, Advocates.**

For the Respondent: **Mr.G.D.Verma, Senior Advocate with Mr.B.C.Verma, Advocate.**

Kuldip Singh, Judge

The plaintiffs are in appeal against the judgment and decree dated 27.12.1999 passed by learned District Judge, Solan in Civil Appeal No.36-S/13 of 1999 dismissing the appeal of the appellants. The parties are referred in the same manner as in the trial Court.

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

2. The facts, in brief, are that plaintiffs filed a suit for declaration that mutation No.343 dated 26.8.1994 is illegal and not binding on the plaintiffs, plaintiffs No.1 and 2 have become owners of share relinquished in favour of their predecessor by Hakim before 1960, permanent prohibitory injunction restraining defendant not to interfere in the property falling in the share of plaintiffs.

3. It is the case of the plaintiffs that parties have joint landed property in village *Kuranwala, Tehsil Kasauli* comprised in *Khata No.12, Khatauni No.13 to 18, Kita 66 measuring 137 Bighas 10 Biswas and Khata No.33 Khatauni No.112 and 113 Kitas 14 measuring 173 Bighas 6 Biswas Tehsil Kasauli, District Solan.* Tholu was the common ancestor of the parties. Surat Ram, son of Tholu, had 6/32 share in the aforesaid property which he inherited from his father. Surat Ram had three sons, namely, Jainti, Hakim and Bogalia, who succeeded to his share after his death in equal shares. The plaintiff No.3 succeeded to the share of Kirat Ram after his death.

4. Hakim was of religious mind. He became *sadhu* and left the village in late 50's, he relinquished his 1/3rd share in equal share to his brothers, namely, Jainti and Bogalia. He retained right over a small portion of joint property for constructing a *Mandir.* The plaintiffs are in continuous uninterrupted possession as owner of their share.

5. The defendant produced some forged documents before Tehsildar and got mutation No.343 dated 26.8.1994 attested in his favour regarding the share of Hakim. The mutation No.343 was

attested illegally behind the back of plaintiffs No.1 and 2 and it does not affect the legal rights of plaintiffs No.1 and 2 in any manner. The plaintiffs No.1 and 2 through their predecessor, have become owners of the share of Hakim which he relinquished before 1960 in favour of Jainti and Bogalia.

6. The defendant contested the claim of the plaintiffs by filing a written statement in which he took preliminary objections of limitation, collusion of plaintiffs *inter-se* to defeat the right of defendant, lack of cause of action, estoppel, suppression of material facts, maintainability on the ground that plaintiffs have taken contradictory and conflicting pleas, mis-joinder of parties. On merits, the defendant has pleaded that land had already been partitioned on the spot. Plaintiff No.3 succeeded Kirat Ram being his widow, Surat Ram was succeeded by his sons, namely, Jainti, Hakim and Bogalia, plaintiffs 1 and 2 succeeded the share of Jainti. Hakim was a religious minded person who became saint and joined some sect of *Sadhus.* Hakim was not having cordial relations with his brother Jainti and his family members. Hakim was living with defendant and whenever Hakim used to visit his village he stayed in *Kutiya (*small house) constructed by defendant for him and only defendant used to look after and serve him. Hakim never relinquished his share in favour of his brothers. The mutation No.343 is legal and was rightly attested in favour of defendant being the surviving brother of Hakim. The defendant denied the claim of the plaintiffs.

7. The trial Court held that mutation No.343 dated 26.8.1994 was rightly attested, Hakim did not relinquish his share in favour of his brothers. The plaintiffs are not entitled to injunction, there is no collusion of plaintiffs *inter-se* for filing the suit and dismissed the suit on 18.5.1999. The plaintiffs filed appeal which was dismissed by learned District Judge on 27.12.1999. The plaintiffs are in second appeal which has been admitted on the following substantial question of law:-

> *Whether the deceased Hakam could not have inherited the property of his father Surat Ram consequent upon his having taken Sanyas?*

The appellant / plaintiff No.3 died during the pendency of the appeal and on 14.10.2003 her name was deleted subject to all just exceptions. The appellants / plaintiffs filed CMP No.669 of 2000 under Order 6 Rule 17 read with Section 151 C.P.C. for amendment of plaint which has been opposed by respondent / defendant. This application was ordered to be heard along with main appeal vide order dated 10.11.2000.

8. I have heard the learned counsel for the parties and gone through the record.

9. Premi wife of Kirat Ram was impleaded plaintiff No.3 in the suit. The suit is basically regarding the succession of Hakim. The plaintiffs No.1 and 2 have claimed that Hakim during his life time and before becoming *Sadhu* relinquished his share in the property in

favour of Jainti father of plaintiffs and defendant Bogalia. In the suit, no claim was set up by Premi regarding the property left by Hakim. Therefore, death of Premi plaintiff No.3 does not affect the suit and appeal survives even after the death of Premi appellant / plaintiff No.3.

10. The plaintiffs have filed CMP No.669 of 2000 under Order 6 Rule 17 read with Section 151 C.P.C. for amendment of plaint. The plaintiffs by way of amendment want to substitute Para-3 of the plaint. It has been submitted that Hakim was last seen in the year 1989, he will be presumed to have died seven years thereafter. The death of Hakim was disclosed by defendant in 1994 and mutation No.343 was attested on 26.8.1994. He would be presumed to have died in the year 1997-98. Hence, mutation attested on 26.8.1994 regarding the estate of Hakim is wrong and illegal. The plaintiffs also intend to plead that cause of action has arisen on 18.2.1974 when mutation of inheritance of Surat Ram was attested in favour of Hakim, Jainti and Bogalia. In the prayer also, the plaintiffs want to make a specific prayer that mutation No.176 dated 18.2.1974 be declared illegal and void not affecting the rights of plaintiffs as Hakim could not inherit the estate of Surat Ram having become *Sanyasi.* The defendant has opposed the amendment application. It has been submitted that nature of the suit will change if amendment is allowed. The grounds which were not set up in the suit earlier are now being sought to be raised. The application is malafide. The application of the plaintiffs for withdrawal of the suit with liberty to file fresh suit has already been

rejected, now what is not permissible directly, the plaintiffs / applicants are trying to do indirectly. An application for amendment was filed before the learned District Judge by the plaintiffs which was dismissed, the application for amendment filed by the plaintiffs in this Court is contradictory to the application for amendment filed by them before the learned District Judge. The grounds which now plaintiffs sought to raise have become barred by limitation.

11. In Para-3 of the plaint, the plaintiffs have specifically pleaded that after the death of Surat Ram, his three sons, namely, Jainti, Hakim and Boglia succeeded to his share in equal shares. This is an admission of the plaintiffs in the plaint that Hakim got 1/3rd share from his father Surat Ram on his death. This admission cannot be permitted by substituting Para-3 in the plaint as proposed without explaining the circumstances for withdrawal of the admission. The plaintiffs were aware of mutation No.176 dated 18.2.1974 regarding the succession of Surat Ram. In the original plaint, the prayer was for declaring mutation No.343 dated 26.8.1994 illegal and void. In the application, nothing has been stated why the prayer for setting aside mutation No.176 dated 18.2.1974 was not made earlier. The amendment application suffers from delay and laches. The proposed amendment, if allowed, will change the nature of the suit land reopen the case afresh, therefore, amendment application being CMP No.669 of 2000 filed by plaintiffs is dismissed.

SUBSTANTIAL QUESTION OF LAW:

12. The plaintiffs in their plaint have submitted that Hakim was having religious bent of mind and became *Sadhu* and left the village in late 50's, he relinquished his 1/3rd share in equal shares to both of his brothers before he left the village. It has also been pleaded in the plaint that after the death of Surat Ram his estate was succeeded by his three sons, namely, Jainti, Hakim and Boglia in equal shares. The plaintiffs No.1 and 2 are the sons of Jainti. In written statement the defendant has pleaded that Hakim was a religious minded person who became a saint and joined sect of *Sadhus*. He used to visit his village. The question is whether Hakim could inherit the property of his father Surat Ram consequent upon his taking '*Sanyas'.* The inter linked question is '*Sanyas'* of Hakim.

13. The pleadings of the plaintiff on the question of *Sanyas* of Hakim in the plaint are that Hakim became *Sadhu* in late 50's and similarly the defendant has also pleaded in the written statement that Hakim was a religious minded person and he became a saint and joined sect of *Sadhus.* The parties except for using the word '*Sadhu'* have not elaborated in the pleadings how Hakim became *Sadhu.* The plaintiffs have contended that on becoming *Sadhu* Hakim disqualified himself to inherit any property, rather Hakim had civil death when he became *Sadhu.* The civil death has serious consequences, therefore, material facts leading to civil death are to be pleaded and proved. The civil death is unlike physical death where

simple proof of death is enough to establish physical death. The Courts have gone to the extent that admission of a person becoming *Sadhu* is not enough to establish that in fact that person has actually become a *Sadhu.* The *Sadhu* in general sense is not to be equated with a *Sadhu* in legal sense when the question of depriving a person of his rights in the property is involved. A religious mind, wearing of typical dress may not be enough to establish that a particular person has become a *Sadhu,* certain ceremonies are necessary to become a *Sadhu.*

14. The learned counsel for the plaintiffs has submitted that status of Hakim as *Sadhu* has been admitted by the defendant and, therefore, no further proof is required that Hakim was *Sadhu.* It has come on record that Hakim used to visit his village regularly. The fact that Hakim had not renunciated the world in law is clear from the fact that after the death of Surat Ram, he was succeeded by his three sons including Hakim vide mutation No.176 dated 18.2.1974. Jainti, father of plaintiffs, never assailed mutation No.176 dated 18.2.1974 vide which estate of Surat Ram was mutated in favour of his three sons including Hakim. Plaintiffs have not challenged the succession of estate of Surat Ram in favour of his three sons including Hakim, rather in the plaint they have pleaded that share of Surat Ram was inherited by his three sons Jainti, Hakim and defendant. An erroneous statement of plaintiffs and defendant in pleadings regarding the status of Hakim will not wipe out the right of Hakim to succeed to his father

when there is no evidence on record that Hakim in fact became *Sadhu* after performing ceremonies. Simple innocuous admission by plaintiffs or defendant that Hakim became *Sadhu* is not sufficient to divest Hakim what he inherited from his father Surat Ram. In ***Babu Lal Versus Moti Lal and Others [AIR 1984 Allahabad 378],*** in Paras-12, 14 and 15 it has been held as under:-

> "In *Baldeo Prasad v. Arya Priti Nidhi Sabha AIR 1930 All 643* it has been held that "The mere fact that a person declares that he has become a sanyasi or that he has described as such or wears clothes ordinarily worn by the sanyasi would not be sufficient to make him a perfect sanyasi. It is essential that he must enter into the fourth stage of his life in accordance with the necessary requirements. He must not only retire from all worldly interests and become dead to the world, but to attain this he must perform the necessary ceremonies without which the renunciation will not be complete."
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> "In *Krishna Singh v. Mathura Ahir, AIR 1980 SC 707* Hon'ble Supreme Court held that "In order to prove that a person has adopted the life of a sanyasi, it must be shown that he has actually relinquished and abandoned all worldly possessions and relinquished all desires for them or that such ceremonies are performed which indicate severance of his natural family and his secular life. It must also be proved, in case of orthodox sanyasi that necessary ceremonies have been performed, such as

> Pindadans or Birajohoma or Prajapathyesthi without which the renunciation will not be complete".
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> "It is thus well settled that in the absence of necessary ceremonies having been performed by a person entering in the life of sanyasi, renunciation will not be perfect, nor his civil death can be assumed so as to divest him from all right in the property belonging to him. There was neither any pleading or any issue on the point, nor any evidence was led to establish that necessary religious ceremonies were performed by Moti Lal at the time when he is said to have adopted sanyas, and as such merely on his admission and declaration to the effect that he had taken sanyas thirty years ago will not make him a perfect sanyasi so as to disentitle him in claiming any right in the property.. … …"

15. It appears the plaintiffs used the expression '*Sadhu'* for Hakim in general sense because of his religious bent of mind and in same sense defendant replied in the written statement. The requirement of law is that before a person is termed *Sadhu* in legal sense he must be initiated in the sect after performing requisite ceremonies and such person must renunciate his attachment towards worldly affairs. In the case in hand, there is no evidence to this effect. PW-1 Bhagwan Dass, general power of attorney holder of plaintiffs, has deposed that Hakim became *Sadhu* after performing religious

ceremonies. From his cross examination, it emerges that Hakim became *Sadhu* somewhere in 1935-37. The statement of PW-1 was recorded on 28.10.1998 when he gave his age 60 years. The birth year of PW-1 is, thus, 1938, therefore, statement of PW-1 is not believable that Hakim became *Sadhu* after performing religious ceremonies. However, this statement of PW-1 indicates even plaintiffs are aware that before becoming *Sadhu* performance of religious ceremonies are necessary.

16. In ***Kondol Row & Another Versus Swamulavaru & Others [AIR 1918 Madras 402],*** a Division Bench of Madras High Court has held as under:-

> "Unless therefore, the plaintiff proves that defendant 1 became a Sanyasi according to the orthodox rites and ceremonies I shall show later on that it is essential for such a Sanyasam that there should be an actual gift or an actual relinquishment or abandonment of all worldly possessions- the plaintiff cannot succeed, even though he may be able to prove that defendant 1 wore coloured clothes or shaved his head or acquired certain external symbols of Sanyasam; for some or all of these are adopted also by the heretical sects."

In the present case, what the plaintiffs have said that Hakim became *Sadhu* and nothing more than that. The concurrence of the defendant that Hakim became *Sadhu* in the written statement is inconsequential

inasmuch as neither the plaintiffs nor the defendant pleaded and proved the necessary facts so as to come to the conclusion that Hakim in law became a *Sadhu* and renunciated the world.

17. In ***Baldeo Prasad Versus Arya Priti Nidhi Sabha and others [AIR 1930 Allahabad 643],*** it has been held as under:-

> "… … the mere fact that a person declares that he has become a Sanyasi or that he is described as such or wears clothes ordinarily worn by the Sanyasis would not be sufficient to make him a perfect Sanyasi. It is essential that he must enter into the fourth stage of his life in accordance with the necessary requirements. He must not only retire from all worldly interests and become dead to the world, but to attain this he must perform the necessary ceremonies without which the renunciation will not be complete*."*

18. In ***Satyanarayana Avadhani Versus Hindu Religious Endowments Board, Madras & Others [AIR 1957 Andh. Pra. 824],*** in Para-6, it has been held as under:-

> "… …. Seshavadhanulu, who continued to be the owner of the properties, had an undoubted right to make the alienation under Exhibit B-2 without any interdiction by the plaintiff, as the properties were his self acquired properties. The assumption of the name of a Sanyasi could not change his status and bring about a civil death unless there was initiation by a Guru into the order of Sanyasis by the appropriate Mantra and there is no

> evidence that this was done either at Banaras or at Kurnool and therefore, there is no civil death of Seshavadhanulu by the time of Exhibit B-2. He therefore, had every right to execute the deed Exhibit B-2. The contention therefore that Seshavadhanulu had no right to execute the document is without substance."

19. In ***Ramakrishan Rao alias Baburao Versus Srinivasarao & Others [AIR 1960 Andhra Pradesh 449],*** in Para-14, it has been held as under:-

> "The essentials of initiation into sanyasa are the desire to give up his wife, sons and property and to devote himself to the life of an ascetic, that is, he must give up Putreshana, Vitteshana, Lokeshana and take up to Bikshacheriam. This renunciation involves certain ceremonies, the performance of which is essential for the entry of a person into the fourth asram, the Sanyasa Ashram, which when entered is irrevocable, causing his civil death. It may also be stated that the initiation by a Guru is an essential element in the change of ashram. Unless these essentials are proved to have been performed, the mere fact that a person puts on the clothes of a sanyasi or removed his sacred thread, or his being described as such by others that he has retired from worldly affairs, does not by itself make him a sanyasi."

20. In ***Madhusudhan Mohapatra Versus Gobind Sabat & Another [AIR 1965 Orissa 54],*** in Para-7, it has been held as under:-

> ".. … It is well established by authorities that a mere expression of a desire to become a Sanyasi either orally or in writing is not enough to make out a case of renunciation of the world, so as to bring about a Civil death in the eye of law, but the formalities necessary for acquiring the status of a Sanyasi have to be undergone. There must be materials to show that he intended to cease all connections with his properties… …."

21. There is no evidence on record that Hakim actually relinquished all worldly possessions, desires before allegedly becoming *Sadh,* similarly no evidence has come on record that any ceremony was performed for inducting Hakim in any sect as *Sadhu.* In these circumstances, Hakim was not a *Sadhu* in law. The only evidence on record is that because of his religious bent of mind he went out of the village and remained with *Sadhus* but he maintained his link with his family in the village. The plaintiffs have failed to prove renunciation of world by Hakim. Hakim rightly inherited along with his brothers the estate of his father Surat Ram. The inheritance of estate of Surat Ram by Hakim under mutation No.176 dated 18.2.1974 was accepted by Jainti. He never challenged it. The plaintiffs 1 and 2 are claiming through Jainti their father, therefore, they cannot challenge inheritance of estate of Surat Ram by Hakim and his two brothers. Jainti pre-deceased Hakim, therefore, on the death of Hakim his estate has been rightly mutated in favour of defendant vide mutation No.343 dated

26.8.1994. The plaintiffs have failed to make out any case for interference. The substantial question of law is answered in favour of the defendant and against the plaintiffs.

22. No other point was urged.

23. In view of the above discussion, the appeal and CMP No.669 of 2000 are dismissed with no order as to costs.

July 23, 2007*.** ***(Kuldip Singh)
(soni) ***Judge***